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8 UNITED STATES DISTRICT COURT  
9 NORTHERN DISTRICT OF CALIFORNIA  
10 SAN JOSE DIVISION  
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12 PATRICIA CLAIRE BANKSTON, )

13 Plaintiff, )

14 v. )

15 PATENAUDE & FELIX, et al., )

16 Defendants. )  
17

Case No.: C 07-3396 JW (PVT)

**ORDER GRANTING PLAINTIFF'S  
MOTION FOR ATTORNEYS FEES  
AND COSTS**

18 On June 13, 2008, District Judge Ware issued an order granting Plaintiff's motion for  
19 summary judgment in which he found Plaintiff is entitled to reasonable fees and costs pursuant to 15  
20 U.S.C. § 1692k(a)(3). Judge Ware instructed Plaintiff to file a written declaration supporting the  
21 specific amount of attorney fees requested and an appropriate bill of costs on or before June 30,  
22 2008. As ordered, Plaintiff timely filed declarations supporting the amount of her attorneys fees.  
23 Defendants filed an objection on the grounds that: 1) Plaintiff had not filed a regularly noticed  
24 motion; 2) Plaintiff had not accepted Defendants' Rule 68 Offer of Judgment; and 3) the fees  
25 requested are purported unreasonable and excessive. On July 25, 2008, in response to Defendants'  
26 objection, Judge Ware issued an order referring Plaintiff's motion for attorneys fees and costs to  
27 Judge Trumbull, and directing Plaintiff to file a motion in accordance with the court's Civil Local  
28 Rules. On July 29, 2008, Plaintiff duly filed her motion for attorneys fees and costs. Defendant filed

1 neither any opposition nor any statement of non-opposition. *See* CIVIL L.R. 7-3(a) & (b). Having  
2 reviewed the papers submitted by the parties, the court finds it appropriate to issue this order without  
3 oral argument. Based on Plaintiff's moving papers and the file herein,<sup>1</sup>

4 IT IS HEREBY ORDERED that Plaintiff's motion is GRANTED. None of the grounds  
5 stated in Defendants' opposition warrant denying or reducing the fees requested. Plaintiff has now  
6 filed a noticed motion, which Defendants did not bother to oppose.<sup>2</sup>

7 Defendants' Rule 68 offer does not warrant any reduction in fees because the offer was not  
8 greater than the amount awarded plus reasonable fees and costs incurred up to the date of the offer.  
9 *See Marryshow v. Flynn*, 986 F.2d 689, 692 (4<sup>th</sup> Cir. 1993) (for a Rule 68 offer to cut-off entitlement  
10 to further fees, the offer must be greater than the verdict plus reasonable fees and costs incurred  
11 when the offer was made). At the time of Defendants' Rule 68 offer, the fees incurred exceeded  
12 \$5,000.00. Thus, Defendants offer which totaled only \$3,501.00, did not exceed the amount Plaintiff  
13 was ultimately awarded together with reasonable fees and costs incurred as of that date.

14 Finally, the amount requested is reasonable. Defendants cites just two cases, only one of  
15 which awarded fees at a rate of \$250 rather than the rate of \$300 requested by Plaintiff's counsel.  
16 *See Abad v. Williams, Cohen & Gray*, 2007 WL 1839914 (N.D. Cal. 2007). In the other, more  
17 recent, case cited by Defendants, Judge Whyte approved a billing rate of \$300 for Mr. Schwinn. *See*  
18 *Kinh Tong v. Capital Management Services Group, Inc.*, 2008 WL 171035 (N.D.Cal. 2008). Based  
19 on this, and the other showing made by Plaintiff such as the adjusted Laffey Matrix rate of \$345, the  
20 court finds \$300 to be a reasonable rate for Mr. Schwinn. The court also finds the number of hours  
21 reasonable. The initial 23.3 hours requested, before Defendants forced Plaintiff to incur the expense  
22 of a noticed motion, compares favorably with the 18 hours Judge Whyte reduced Mr. Schwinn's  
23 hours to in the *Kinh Tong* case. Further, the court has reviewed the amount of time devoted to the  
24 various tasks, and finds them to be reasonable under all the circumstances of this case.

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26 <sup>1</sup> The holding of this court is limited to the facts and the particular circumstances  
27 underlying the present motion.

28 <sup>2</sup> The court is not impressed with Defendants' tactic of objecting based on the lack of a  
noticed motion, only to ignore the motion once it was filed. All this did was increase the amount of  
Plaintiff's fees that Defendants are obligated to pay.

1 For the reasons stated, the court finds Plaintiff is entitled to an award of fees in the amount of  
2 \$8,372.50, and non-taxable costs in the amount of \$58.62.

3 Dated: 8/29/08

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5 PATRICIA V. TRUMBULL  
6 United States Magistrate Judge  
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